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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re N.M., a Person Coming Under the Juvenile  
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

N.M.,

Defendant and Appellant.

F077484

(Super. Ct. No. JJD070361)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Tulare County. Hugo J. Loza,  
Judge.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and  
Respondent.

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\* Before Franson, Acting P.J., Peña, J. and Snauffer, J.

## **INTRODUCTION**

Appellant N.M.'s latest Welfare and Institutions Code<sup>1</sup> section 602 petition alleged he had committed a felony residential burglary (Pen. Code, § 459) and misdemeanor resisting arrest (Pen. Code, §148, subd. (a)(1)). At a contested jurisdiction hearing, the allegations of the petition were found true. N.M. appeals. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

On February 3, 2017, the Tulare County District Attorney filed a section 602 petition against N.M., which charged him with two counts of petty theft (Pen. Code, § 484, subd. (a)). At the initial hearing, N.M. was released to the custody of his parents and a section 654.2 suitability hearing was scheduled. On April 14, 2017, the juvenile court deemed N.M. unsuitable for informal probation pursuant to section 654.2.

When N.M. failed to appear at the April 18, 2017 pretrial hearing, a bench warrant was issued. N.M. again failed to appear at an April 25, 2017 pretrial hearing, and a bench warrant issued.

N.M. surrendered on the bench warrant on May 19, 2017, in Tulare County. That same day, he admitted one count of the section 602 petition. The juvenile court directed the probation department to “look into having” N.M. and his brother, T.M., placed with siblings out-of-state.

At the June 8, 2017 disposition hearing, N.M. was placed on probation. A notice of violation of probation was filed on June 27, 2017, after N.M. absconded from his home.

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<sup>1</sup> References to code sections are to the Welfare and Institutions Code unless otherwise specified.

N.M. admitted the allegations of the probation violation notice on July 28, 2017. The Tulare County Juvenile Court determined that Fresno County was N.M.'s place of residence and transferred the case to Fresno County.

The Fresno County Juvenile Court accepted the transfer and scheduled a disposition hearing for August 17, 2017. Tulare County issued an arrest warrant for N.M. on August 15, 2017. On August 17, 2017, Fresno County transferred N.M.'s case back to Tulare County to clarify whether he was a "725(a) non-ward or a 602."

On August 23, 2017, Tulare County stated N.M. previously had been declared a ward pursuant to section 602. The juvenile court in Tulare County also determined N.M. was a resident of Fresno County.

Another section 602 petition was filed against N.M. in Tulare County on October 17, 2017. This petition alleged N.M. had committed two felonies, unlawful taking or driving of a vehicle (Veh. Code, § 10851, subd. (a)) and receiving stolen property (Pen. Code, § 496 subd. (a)), and the misdemeanor offense of possession of burglar's tools (Pen. Code, § 466). N.M. was determined to be eligible for deferred entry of judgment.

The juvenile case was transferred back from Fresno County to Tulare County for jurisdictional purposes. N.M. admitted two of the allegations in the October 17, 2017 petition, unlawful driving or taking of a vehicle and possession of burglar's tools. The juvenile court set the maximum period of confinement as three years two months, then transferred the case on October 25, 2017, to Fresno County for disposition.

A third section 602 petition was filed against N.M. in Tulare County on March 6, 2018, alleging N.M. committed the felony of first degree burglary and the misdemeanor offense of resisting arrest. It was determined N.M. was ineligible for deferred entry of judgment.

A contested hearing on the third section 602 petition began on March 28, 2018. At the hearing, Jamie Sharpe testified that she left her apartment the morning of March 2,

2018, and when she returned about three hours later, her apartment had been “trashed.” Her apartment door was open, two windows had been broken, and items were scattered on the floor; the apartment had not been in this condition when she left.

Sharpe discovered several items had been taken from her apartment, a white backpack, laptop computer, watch, fire stick, cookies, and a “bunch of candy and fruit snacks.” Sharpe contacted the police department. The backpack was recovered and inside were the fire stick, and some change. All of the missing items were recovered.

Officer Nicholas Marrero also testified. Around 12:30 p.m., on March 2, 2018, Marrero was dispatched to the scene of a burglary. Dispatch told him that the juveniles seen breaking into the residence were now walking on Court Street. Marrero spotted three juveniles near Feemster and Court Streets.

Marrero exited his vehicle and stopped the three juveniles; one of the three ran away. As Marrero tried to secure a second juvenile; N.M. fled. N.M. was not carrying anything in his hands when he fled, but he did have a black Jansport backpack on his back. Marrero secured the remaining juvenile, called for assistance, and “put out information” regarding the two juveniles that fled.

N.M. was apprehended by another officer. One of the other juveniles, not N.M., had Sharpe’s white backpack hidden under his jacket, with a laptop, fire stick, and some change inside. This same juvenile also had a watch in his jacket pocket. Sharpe identified the items found in the white backpack.

Officer Jeremy Ediger testified that he was called to assist in the investigation of a burglary. Ediger canvassed the area in an attempt to locate property. About an hour after he was initially called in, Ediger found a black Jansport backpack in the backyard of a residence on Feemster Street. Ediger contacted Sharpe; Sharpe identified the items in the backpack.

The contested hearing continued on April 2, 2018, at which time Richard Luna testified. The morning of March 2, Luna was on the rear balcony of his apartment. He

saw a broken window at another apartment and saw two people climb out through the broken window. Luna identified one of those he saw climbing through the window as N.M.

The Tulare County Juvenile Court found true both allegations in the March 6, 2018 petition. The case was transferred back to Fresno County for disposition. The Fresno County Juvenile Court determined the maximum period of confinement was seven years two months, reinstated N.M. on probation and released him to the custody of probation, “[pending] suitable placement.”

N.M. filed a notice of appeal on May 8, 2018.

### **DISCUSSION**

Appellate counsel filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436 on February 13, 2019. On February 14, 2019, this court issued its letter to N.M. inviting supplemental briefing. No supplemental brief was filed.

The most recent section 602 petition that was sustained against N.M. found he had committed first degree burglary and resisted arrest.

For burglary, the prosecution must prove that the accused entered a specific structure with the intent to commit theft or any felony. (*People v. Wallace* (2008) 44 Cal.4th 1032, 1077.) Assuming the requisite intent is present, burglary is technically complete upon entry. (*People v. Munguia* (2016) 7 Cal.App.5th 103, 111.) Evidence of an accused’s state of mind is generally circumstantial, “but circumstantial evidence is as sufficient as direct evidence to support a conviction.” (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

Here, N.M. was observed by Luna climbing out of a window of Sharpe’s apartment. Multiple items were taken from Sharpe’s apartment. A black Jansport backpack that N.M. was carrying when stopped by Marrero, and abandoned when he fled, turned out to contain items taken from Sharpe’s apartment. This evidence constitutes substantial evidence that N.M. committed first degree burglary.

The elements of the offense of resisting arrest are that the accused willfully delayed, resisted, or obstructed a peace officer in the performance of his or her duties and reasonably should have known the person was a peace officer. (*Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 894–895.) Marrero was in uniform and driving a patrol vehicle when he stopped N.M. and two other juveniles in connection with the burglary. N.M. ran away from Marrero while Marrero was attempting to secure one of the other juveniles. N.M. was apprehended by another officer. N.M.’s actions in fleeing from Marrero constituted the offense of resisting arrest.

After an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

#### **DISPOSITION**

The April 2, 2018 jurisdictional findings and the April 20, 2018 disposition order are affirmed.